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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,150	02/27/2004	Beverly C. Phiher	56730.000004	4616

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EXAMINER

WOOD, KIMBERLY T

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/787,150	Applicant(s) PHIFER ET AL.	
	Examiner Kimberly T. Wood	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2005.
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1,2,6-10,12-19,22 and 23 is/are rejected.
 7) ☒ Claim(s) 3-5,11,20,21 and 24-41 is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/26/05</u> . | 6) <input type="checkbox"/> Other: _____ |

This is an office action for serial number 10/787,150, entitled Reading Stand, filed on February 27, 2004.

Election/Restrictions

Applicant's election with traverse of Species I drawn to figures 1-17 in the reply filed on April 25, 2005 is acknowledged.

Applicant's election with traverse of species I in Paper Mailed on April 24, 2005 is acknowledged. The traversal is based on the grounds that the embodiments are directed to a unitary concept and based on various policy arguments. These arguments are unpersuasive. The arguments set forth by the applicant (i.e., a want of a serious burden on the examiner, or inventions having the same classification) are arguments commonly set forth when traversing a restriction of the invention. (See MPEP 803). However, the examiner is requiring the applicant to elect between several disclosed species. A proper traversal of an election of species includes arguments that the species are not patentable over one another. What's more, if patentably different species are disclosed in the application, "... it is not necessary to show a separate status in the art or separate classification." (See MPEP 808.01(a)).

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While there is a policy of compact prosecution, the plain language of the rules set forth that an examiner may require an election of species between patentably different species (see MPEP 808.01(a); 37 CFR 1.146). The argument regarding excessive expense is unpersuasive since excessive is a relative concept. Furthermore, as the applicant is aware, a separate fee schedule has been provided for those claiming small-entity status. Finally, there is no policy to reduce the number of patents; in fact, an argument could be made that it is less confusing to have a separate patent for each distinct embodiment. Since the applicant has not submitted persuasive arguments that the embodiments are not distinct from one another, the requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 6-10, 12-17, and 22 are rejected under 35 U.S.C. 103(a) as being anticipated by Headington 2,003,746.

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Headington discloses a base member case (2-4), a reading lid (6), at least one page holder (13), a support member (10), a hinge (5), a center document support being U-shaped (17) attached using a primary collar and a bracing collar (21), a page assist support (13) with page assist lock (15), .

Headington discloses all of the limitations of the claimed invention except for the prop member pivotally connected to the backside of the reading platform, the prop being made of wire, and U-shaped. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the prop member pivotally connected to the backside of the reading platform , since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the prop of wire, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. It would have been an obvious matter of design choice to have made to have made the prop U-shaped, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art and is a

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design choice since the applicant has not shown how the chosen shape is critical (see Smith 1,203,659).

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Headington 2,003,746 in view of Wofford 2,489,553. Headington discloses all of the limitations the claimed invention except for the hinge including a pin integrally connected to the base and a hinge holder portion integrally formed with the reading platform. Wofford teaches that it is known to have a pin (14) integrally connected to the base (10) and a hinge holder portion (14) integrally formed with the reading platform (13). It would have been obvious to one having ordinary skill in the art to have modified Headington to have included the pin and hinge holder portion as taught by Wofford for the purpose of providing the reading platform to be tightly closed upon the base.

Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Headington, as disclosed above in view of Awofolu 4,163,539. Headington discloses all of the limitations of the claimed invention except for the page assist support being U-shaped and having a page assist lock including a cam collar and cam lever. Awofolu discloses a page assist support (102, 36 and 48) being U-shaped and having a page assist

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lock including a cam collar (92) and cam lever (54). It would have been obvious to one having ordinary skill in the art to have modified Headington to have substituted the page assist support and lock as taught by Awofolu for the purpose of providing a more secure means of holding down pages of the book.

Allowable Subject Matter

Claims 3-5, 11, 20, 21, and 24-41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art discloses conventional book and reading stands.

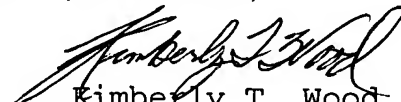
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly T. Wood whose telephone number is 571-272-6826. The examiner can normally be reached on Monday-Thursday 7:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be

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reached on 571-272-6815. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kimberly T. Wood
Primary Examiner
Art Unit 3632

June 26, 2005